

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JULIAN BODNARI,	§
	§ No. 345, 2022
Defendant Below,	§
Appellant,	§ Court Below–Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 9909027880 (S)
STATE OF DELAWARE,	§
	§
Appellee.	§

Submitted: February 10, 2023

Decided: April 20, 2023

Before **SEITZ**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

ORDER

After consideration of the parties’ briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Julian Bodnari, appeals the Superior Court’s denial of his motion for correction of illegal sentence. For the reasons that follow, we affirm the Superior Court’s judgment.

(2) In 2010, a Superior Court jury found Bodnari guilty of trafficking in cocaine, possession with intent to deliver cocaine (“PWITD”), possession of a firearm during the commission of a felony (“PFDCF”), and other related offenses. Following a presentence investigation, the Superior Court sentenced Bodnari to an aggregate of thirty-three years of incarceration followed by probation. Relevant to

this appeal, Bodnari received an enhanced sentence for PWITD (thirty years of incarceration, suspended after fifteen years) because he had been previously convicted of PWITD.¹ We affirmed Bodnari’s convictions and sentence on appeal.²

(3) Between 2013 and 2019, Bodnari filed numerous unsuccessful motions for sentence reduction or modification.³ In each motion, Bodnari acknowledged that he was serving a minimum-mandatory sentence of fifteen years for his PWITD conviction.⁴

(4) In June 2022, Bodnari filed a motion for correction of illegal sentence under Superior Court Criminal Rule 35(a). Bodnari pointed to the Superior Court’s sentencing order—which cites the PWITD statute (then-extant 11 *Del. C.* § 4751 (“Section 4751”))—and claimed that this notation meant that he was sentenced for

¹ When Bodnari committed the conduct that led to his convictions, the Delaware Code provided, “In any prosecution for violation of [PWITD] ... where a defendant has previously been convicted of any offense under this chapter, or under any statute of the United States or of any state relating to the delivery or possession with intent to deliver of a controlled substance or counterfeit substance classified in Schedules I and II as a narcotic drug, the minimum term of imprisonment shall be 30 years and the maximum term for such conviction shall be 99 years and 15 years of such portion of such minimum term shall be a mandatory minimum term of imprisonment and shall not be subject to suspension and no person shall be eligible for probation or parole during such minimum term.” 16 *Del. C.* § 4763(a)(3) (1999).

² *Bodnari v. State*, 2003 WL 22880372 (Del. Dec. 3, 2003).

³ See *State v. Bodnari*, Cr. ID No. 9909027880 (S) (Del. Super. Ct.), Docket Entry Nos. 152-54, 158-59, 161-62, 170, 172, 175-76. See also *Bodnari v. State*, 2016 WL 4091232 (Del. July 18, 2016) (affirming denial of “motion for resentencing under House Bill 312”); *Bodnari v. State*, 2019 WL 3945647 (Del. Aug. 20, 2019) (affirming denial of motion for reduction of sentence).

⁴ See, e.g., *State v. Bodnari*, Cr. ID No. 9909027880 (S) (Del. Super. Ct.), Docket Entry Nos. 152 (wherein Bodnari states that he is serving a mandatory thirty-three-year sentence, “the final mandatory sentence of 15 years is pursuant to 16 *Del. C.* subsection 4751, PWITD NSI CCS (Cocaine).”), 158 (same), 161 (same), 175 (same).

a first-time PWITD conviction for which the statutory maximum penalty is ten years of imprisonment. The Superior Court denied the motion, noting that Bodnari's PWID sentence was subject to enhancement because Bodnari had previously been convicted of PWID.

(5) We review the denial of a motion for correction of illegal sentence for abuse of discretion.⁵ To the extent a claim involves a question of law, we review the claim *de novo*.⁶ A motion to correct an illegal sentence may be filed at any time.⁷ A sentence is illegal if it exceeds statutory limits, violates the Double Jeopardy Clause, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.⁸

(6) On appeal, Bodnari argues, as he did below, that he was sentenced under Section 4751, not then-extant 16 *Del. C.* § 4763(a)(3) ("Section 4763(a)(3)"), because Section 4763(a)(3) is not referenced in the Superior Court's sentencing order. Bodnari also claims for the first time on appeal that the court could not impose an enhanced sentence under Section 4763(a)(3) because the court failed to call upon

⁵ *Fountain v. State*, 2014 WL 4102069, at *1 (Del. Aug. 19, 2014).

⁶ *Id.*

⁷ Del. Super. Ct. Crim. R. 35(a).

⁸ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

Bodnari to admit or deny the existence of a prior PWITD conviction as required by 11 *Del. C.* § 4215(a) (“Section 4215(a)”)⁹ Bodnari’s claims are unavailing.

(7) Although Bodnari is correct that the Superior Court’s sentencing order refers to Section 4751, it is clear from the record that Bodnari was subject to enhanced sentencing under Section 4763(a)(3) and was sentenced accordingly.¹⁰ First, the sentencing transcript reflects that the parties agreed that Bodnari faced a total minimum-mandatory sentence of thirty-three years:

THE COURT: All right. Mr. Bodnari is here for sentencing.

...

I also note that Mr. Bodnari faces a substantial period of mandatory time.... He faces thirty-three years.

DEFENSE COUNSEL: That’s correct, Your Honor.¹¹

That calculation was correct because, at the time Mr. Bodnari committed the conduct that led to his convictions, a conviction for trafficking cocaine in an amount greater than 100 grams carried a fifteen-year minimum-mandatory sentence,¹² a conviction

⁹ 11 *Del. C.* § 4215(a) (“If at the time of sentence, it appears to the court that the conviction of a defendant constitutes a second or other conviction making the defendant liable to a punishment greater than the maximum which may be imposed upon a person not so previously convicted, the court shall fully inform the defendant as to such previous conviction or convictions and shall call upon the defendant to admit or deny such previous conviction or convictions. If the defendant shall admit the previous conviction or convictions, the court may impose the greater punishment. If the defendant shall stand silent or if the defendant shall deny the prior conviction or convictions, the defendant shall be tried upon the issue of previous conviction....”).

¹⁰ See *Hughes v. State*, 2002 WL 31355230, at *1 n.9 (Del. Oct. 15, 2002) (rejecting as “meritless” the defendant’s argument that he was not subject to a statute’s provisions because the statute was not cited in the sentencing order).

¹¹ App. to Answering Br. at B42.

¹² 11 *Del. C.* § 4753A(a)(2)(c) (1999).

for PFDCF carried a three-year minimum-mandatory sentence,¹³ and a conviction for PWITD if the defendant had previously been convicted of PWITD carried a fifteen-year minimum-mandatory sentence.¹⁴ Second, the sentencing order accurately reflects these minimum-mandatory terms, and the Superior Court judge articulated them when he imposed Bodnari's sentence. Third, Bodnari does not allege that he was not subject to enhanced sentencing because of a prior PWITD conviction, and the record reflects that Bodnari had, in fact, been previously convicted in Pennsylvania for PWITD.

(8) We review Bodnari's claim that his sentence is illegal because the proceedings did not comply with Section 4215(a) for plain error because he did not present his argument to the Superior Court in the first instance.¹⁵ Although framed as an argument that his sentence is illegal, Bodnari's claim is an attack on the manner in which his sentence was imposed.¹⁶ A motion to correct a sentence imposed in an illegal manner must be brought within ninety days after the sentence is imposed.¹⁷

¹³ 11 *Del. C.* §1447A(b).

¹⁴ 11 *Del. C.* § 4763(a)(3) (1999).

¹⁵ Del. Supr. Ct. R. 8 ("Only questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented.").

¹⁶ *Guinn v. State*, 2015 WL 3613555, at *1 (Del. June 9, 2015).

¹⁷ Del. Super. Ct. Crim. R. 35(a) ("The court... may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence."); Del. Super. Ct. Crim R. 35(b) ("The court will consider an application made more than 90 days after the imposition of sentence only in extraordinary circumstances or pursuant to 11 *Del. C.* § 4217.").

On the record before us, we do not discern any exceptional circumstances that would warrant consideration of Bodnari's untimely claim.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice